IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.1022 of 2001.

Date of decision: 9.1.2007

Beli Ram Sharma **….Petitioner**

Versus

High Court of Himachal Pradesh. **Respondent**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioners : **Mr. J.L. Bhardwaj, Advocate.**

For the Respondent : **Mr. Rajiv Sharma, Senior Advocate with Mr. Surinder Sharma, Advocate.**

Dev Darshan Sud,J.

The petitioner is presently working as a Junior Scale Stenographer in the Registry of this Court. According to the averments made in the writ petition, he joined as a clerk in the month of December, 1993 through open competition and thereafter was appointed as a Junior Scale Stenographer after he qualified the prescribed test. The petitioner submits that he appeared in the Senior Scale Stenographer test thrice, but he was not promoted and persons junior to him have been considered and promoted to this post, though, according to him, they did not fulfill the requisite qualifications for promotion.

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[1] *Whether the reporters of Local Papers may be allowed to see the judgement*?

The selection to the post of Senior Scale Stenographer is governed by the High Court of Himachal Pradesh (Recruitment, Conditions of Service and Conduct), Rules, 1997. By a notification dated 4th June, 1999, the criteria for selection to the post of Senior Scale Stenographer, was as under:-

> "By selection from amongst the Jr. Scale Stenographers working in the High Court and Subordinate Courts in the state, failing which by direct recruitment from graduate candidates, having speed in English Stenography at the speed of 110 W.P.M. by transcription of the matter dictated, within a period of five times to the period allotted/taken for the dictation, after exemption, if need be, 10% of the mistakes inclusive of left out words, in either case."

These rules were subsequently re-enacted in the year 2003, providing that the criteria would still be by selection. The Rule reads as under:-

> "By selection on the basis of limited competitive examination from amongst Junior Scale Stenographers working in the High Court and the Subordinate Courts in the State failing which by direct recruitment. The candidate shall have to pass English Stenography test at the speed of 110 words per minute to be transcribed within a period five times the period taken to dictate, and typing test at the speed of 40 words per minute."

The grievance of the petitioner is that by carrying out the amendments, the criteria and eligibility have been changed and no avenue for promotion has been left for the petitioner to be considered for the post of

Senior Scale Stenographer. The petitioner represented to the respondents regarding inequities, which according to him, had arisen because of the amendment in the rules. Petitioner submitted that the rules are discriminatory, arbitrary and violative of Article 14 of the Constitution of India.

A writ in the nature of mandamus is sought for quashing the rules, as being ultra vires and unconstitutional, and directing the respondents to amend the rules as has been done in the categories of Senior Scale Stenographers to Personal Assistants and Judgment Writers. A writ of mandamus is also sought for directing the respondents to promote the petitioner to the post of senior Scale Stenographer as he has already put in five years of service in the category of Junior Scale Stenographers. The petitioner also prays that the respondents be directed to reconsider the representation made by him.

In the rejoinder, the petitioner has also made another grievance that one Shri Chura Mani Thakur, was promoted to the post of Senior Scale Stenographer without subjecting him to any test and that he is junior to the petitioner.

I have heard the learned counsel for the parties and have gone through the record. On going through the records, I find that the petitioner had appeared for the test of Senior Scale Stenographer on eight occasions, namely, on 23.5.1998, 30.10.1999,

5.8.2000, 11.3.2001, 4.5.2002, 25.6.2004, 4.3.2005 and 8.8.2005, and had failed to qualify the minimum standard as prescribed by the rules and was thus not considered for promotion. Although, by his length of service he was in the zone of consideration, yet for the purposes of selection he did not qualify the basic minimum requirements and thus his case was not considered.

Learned counsel appearing on behalf of the petitioner has placed reliance on **Council of Scientific and Industrial Research and another** Vs. **K.G.S. Bhatt and another**, **(1989) 4 SCC 635**, Dr. **Ms. O.Z. Hussain** Vs. **Union of India**, **1990 (Supp) SCC 688** and **State of Tripura and others Vs. K.K. Roy**, **(2004) 9 SCC 65**, in support of his contention that avenues for promotion have to be provided to employees. Learned counsel submits that the petitioner has a right to be considered for promotion. There is no dispute with this proposition of law that right to promotion is an incident of service. However, to urge further that the promotion to the next higher post must be made in a particular manner suiting the petitioner or an incumbent by relaxation of the qualifying criteria, cannot be treated as a fundamental right vested in an individual. As I have noticed above, the petitioner appeared for the test on eight occasions and every time he failed to qualify the same. No grievance can be made by the petitioner that he has been deprived of being considered to the next higher post of Senior Scale Stenographer. In **K.H. Siraj** Vs. **High Court**

of Kerala and others, **(2006) 6 SCC 395**, the Hon'ble Supreme Court was pleased to hold that prescription of test to select the best possible talent could not be challenged as being arbitrary. It was further held that the best mode of assessing the suitability of a candidate for a particular post would be by means of test for which the High Court would be the best Judge. Further, it was laid down that the candidates who participated in the selection process with the knowledge that for selection they had to secure minimum prescribed marks, could not turn around and challenge selection process. To argue that no test should be prescribed, as it is unconstitutional, is a proposition, which cannot be accepted. Having appeared at the selection test on about eight occasions, it is not open to the petitioner to now contend that the method of selection is arbitrary or that his promotion avenues have been obliterated. This contention of the learned counsel is, therefore, rejected.

Further, I do not find any merit in the other contention made by the petitioner that Shri Chura Mani Thakur has been appointed as Senior Scale stenographer without conducting any test. It is strange that averments have been made in the petition without ascertaining the true facts. The record shows that Shri Chura Mani Thakur had appeared in the test of Senior Scale Stenographer held on 11.3.2001. He was placed at Sr. No.4 above Ms. Mamta Bansal and below Shri Manoj Kumar Sood. On Manoj

Kumar Sood declining to accept his appointment, Shri Chura Mani Thakur was appointed as Senior Scale Stenographer. Initially, after qualifying the test of Senior Scale Stenographer, Shri Chura Mani Thakur, had been appointed as Junior Scale Stenographer. The contention of the petitioner is thus without merit and cannot be considered. No mandamus can be issued by this Court directing that the rules be framed in a particular manner, and more so, in a manner which suits the interest of the petitioner.

The other grievance made by the petitioner is that his representation has been rejected by a non-speaking order. The petitioner is not aware as to what were the grounds which weighed with the respondent in rejecting his representation. Learned counsel has placed reliance on **S.N. Mukherjee** Vs. **Union of India**, **(1990) 4 SCC 594**, in support of his contention. The representation of the petitioner has been rejected by a communication dated 5.10.2001, which simply states that:

> "Reference you representation dated 3.9.2001 on the subject noted above.
>
> This is to inform you that your representation has been considered and rejected."

No reasons have been given as to what were the grounds on the basis of which representation of the petitioner was rejected. During the course of hearing, the relevant record was shown to the petitioner. However,

it is directed that the respondent shall communicate the reasons on the basis of which decision to reject the representation of the petitioner was taken.

The writ petition is, therefore, disposed of in the terms as aforesaid. There shall be no order as to costs.

January 9, 2007 **(Dev Darshan Sud)**
(ss) **Judge**